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In the Civil Rights Acts of 1957, 1960, and 1964, Congress included provisions empowering the Attorney General of the United States to bring suits against racially discriminatory voting practices. These and the Fifteenth Amendment enforcement powers, led to the passage of the [Voting Rights Act of 1965](#) (VRA). The VRA targeted states with a history of discrimination in the election process by including those states that used discriminatory practices based on race, color, or membership in a language minority group in the 1960 presidential election. The Act has been amended and renewed several times. The Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 extended the following provisions of the Voting Rights Act for twenty-five years: requiring preclearance, bilingual elections, and authorizing appointment of federal observers.

Additional information about the VRA can be found on [DOJ's website](#) which provides the full text of current federal regulations implementing the preclearance requirement.

24.1 Covered Jurisdictions

Section 5 of the Act requires covered jurisdictions to preclear changes affecting voting either administratively by filing a request with the Department of Justice, or judicially by filing a declaratory judgment action in the federal district court for the District of Columbia. Preclearance ensures that any changes in election or voting procedures do not deny or abridge the right to vote of any citizen. Covered changes must be submitted for

pre-clearance before implementation. The Act's procedures are administered by the Department of Justice, Office of the Attorney General. [28 CFR 51](#).

Virginia is covered under the requirements of Section 5 of the VRA of 1965, as amended. Most Virginia localities could easily qualify for bailout, and are increasingly pursuing this option to save on time and costs for the locality. *See below*, GREB 24.2 ([Bailout from the Voting Rights Act of 1965](#)). DOJ's website identifies covered jurisdictions but may not be current as to all bailouts which are continuing. For covered jurisdictions, changes affecting voting must be submitted and approved ("precleared"). SBE must enforce the preclearance requirement but will, when necessary and to the extent possible, assist localities with obtaining approval from the Department of Justice on an expedited basis.¹

24.1.1 What Requires Preclearance

It is important to understand that Section 5 applies only to changes in practices or procedures affecting voting. Continuous use of a voting practice in effect prior to the jurisdiction's coverage date does not implicate Section 5, nor does continued use of a practice already reviewed under Section 5.

Section 5 applies to any change affecting voting, even though it may appear minor or indirect, expands voting rights, or is designed to address objections raised as to a prior submitted change. *See [Riley v. Kennedy, 553 US 406 \(2008\)](#)*.

Examples of changes requiring preclearance include (but are not limited to) the following (*See, [28 CFR 51.17](#)*):

- A change in hours the voter registration office is open, even if the hours are increased
- A move of the voter registration office, either within the same building or to a different building
- A change in polling place
- A change in voting system (*e.g.*, from DRE to optical scan)
- A change due to redistricting
- Placement of voter registration application boxes
- Any other change in the way registration is offered or elections conducted
- Special elections



Further examples can be found at [28 CFR 51.13](#) and on the [DOJ website](#).

¹ The Voting Rights Act provides for submissions by the chief legal officer or other appropriate official of the affected jurisdiction. [42 USC 1973c](#). SBE staff cannot control legal counsel hired by localities and their management is a local responsibility.

24.1.2 Who Submits Paperwork

Whenever state election laws are changed, the Attorney General's Office (AG) submits the preclearance request for the law itself. If SBE changes procedures or forms, those changes are also submitted by the AG at the request of SBE. Purely local changes, such as legislation amending a city or town charter, must be submitted by the local government. GRs and EBs should be proactive in asking questions to assure that any preclearance submissions needed have been made and offer their support to the local government staff preparing the submissions. It is essential that any delegation of responsibility to make preclearance submissions to the general registrar be properly documented and the general registrar is able to request support from the local government when needed.

Localities must submit specific changes they make to comply with the law (for example, changing registrar office hours). If a locality adopts an ordinance change relating to elections (such as changing elections from May to November or moving a polling place) the locality must submit that change for preclearance before implementation.

-  If the state passes a charter change or other bill specific to a locality (for example, allowing a locality to hold a referendum not otherwise authorized by law), it is that locality's responsibility to submit the law for preclearance.
-  SBE policy staff can provide guidance about what changes should be submitted, and whether the state or the locality is responsible for submitting the change.

Although the local governing body is responsible for submitting proposed changes, the electoral board and general registrar must do all that is possible to help assure that submissions are made on a timely basis. Some localities delegate responsibility for preclearance submissions to the local registrars or electoral boards. Others allow registrars or electoral board members to prepare draft submissions for a local government attorney to review and submit. Online submission is now available through the [DOJ website](#) to general registrars and electoral boards to suggest to local administrators as an opportunity to save on legal costs by increasing the responsibility of the registrar staff for making submissions.

24.1.3 Timing


The Justice Department has a minimum of sixty days to respond to any request for preclearance. It is possible to request expedited preclearance from the Department of Justice but they do not have to grant it. Generally, the Department of Justice will assume a thirty to forty-five day time frame for an expedited request unless a particular date is requested. It is always a good idea to ask for expedited consideration, if you think it may

be necessary. [28 CFR 51.34](#). A proceeding may also be filed in the U.S. District Court for the District of Columbia.

24.1.4 Where and How to Submit

Submissions can be made electronically through [DOJ's website](#). Mailed submissions must be sent to the [Voting Section](#) of the Civil Rights Division in the U.S. Department of Justice. The required contents of the submission elements are listed in [28 CFR 51.27](#). [28 CFR 51.28](#) lists other data that can be submitted.

The mailing address is:	Deliveries by overnight express service such as Airborne, Federal Express, etc., should be addressed to:
Chief, Voting Section Civil Rights Division Room 7254 - NWB Department of Justice 950 Pennsylvania Ave N.W. Washington, D.C. 20530	Chief, Voting Section Civil Rights Division Room 7254 – NWB Department of Justice 1800 G St., N.W. Washington, DC 20006

-  SBE recommends that submissions be sent electronically or by an overnight delivery service that provides package tracking. Due to heightened security in the handling of U.S. government mail, check the Department of Justice Civil Rights Division web site regularly to ensure that you are using the most current mailing instructions.

When mailing, take the following steps:

- Always put, "Re: Submission under Section 5 of the Voting Rights Act of 1965, as amended" at the beginning of the submission.
- Mark the envelope, "Submission under Section 5 of the Voting Rights Act" and ensure your return address is clearly indicated.
- If you have an emergency change, you *must* reach the Department of Justice by telephone.
- You may also call to check the status of your submission, and should always call to confirm receipt so you know when the sixty days expires (call (800) 253-3931 or (202) 514-4609).

24.2 Bailout from the Voting Rights Act of 1965

The VRA was amended in 1982 to allow individual localities without objections from DOJ or actions, pending or closed, for a period of at least 10 years, to request a “bailout” (release) from the preclearance requirements. [42 USC 1973b\(a\)](#). Localities that have attained “bailout” are still subject to all of the other requirements of the VRA such as bilingual elections when applicable. [42 USC 1973aa-1a](#).

The advantages of bailout include: elimination of the burden of preclearance; avoidance of inconvenience to and delay of implementation; and elimination of costs of preparing plans for DOJ. Delayed preclearance can significantly increase costs by requiring multiple notices of proposed and precleared changes. For example, a locality that delays changing a polling place until shortly before an election may find itself with insufficient time to preclear the change before notices must be mailed to affected voters under § 24.2-306(B). Such a locality risks having to mail multiple notices to assure compliance with state and federal law requirements.

The disadvantages of bailout include short-term, heightened scrutiny of voting and election procedures during bailout and the cost of bailout. The cost depends upon the size of the jurisdiction seeking bailout and, in the long run, is usually cost effective. Also, the Act provides a ten year look back or recapture period; bailout status can be lost if the jurisdiction is later found to be intentionally discriminatory. [42 US.3C 1973b\(a\)\(5\)](#).

A list of Virginia localities that have bailed out since Congress amended the VRA in 1982 is available in SharePoint (GREB Shared Documents, Bailout). These localities can be a resource for questions about the process.

Localities interested in bailout may contact SBE for support in initiating the process. To begin the process, a locality will need to consult counsel about arranging individual meetings with minority leaders and organizations as well as public hearings. Localities are required to give legal notices in newspapers, public service announcements on cable TV, and post notices in public locations.

24.2.1 Bailout Requirements

To obtain Bailout, a jurisdiction must show the following within the last 10 years:

- No discriminatory test or device has been used to determine voter eligibility.
- No federal court judgment has found discriminatory denial of right to vote.
- No federal examiners have been assigned.
- There is a record of timely submission of all voting changes.
- All preclearance requests have been approved.
- There have been no objections by DOJ or denials by the U.S. District Court for D.C.

These additional requirements must also be met:

- Dilutive voting procedures have been eliminated.
- There have been constructive efforts to eliminate harassment or intimidation of voters.
- The jurisdiction has expanded opportunities for convenient registration and voting.
- Minority persons have been appointed as election officials throughout all stages of registration and election process.

The following checklist includes the information that must be gathered for bailout:

Statistics

- ☐ Demographic data

Voting data (including but not limited to)

- ☐ Registration
- ☐ Turnout
- ☐ Dispersal of populations

Election History


- ☐ Voter registration opportunities
- ☐ Changes to method of election
- ☐ Minority candidates

Pre-clearance History

- ☐ DOJ Records
- ☐ City or county Records

Appointment of Election Officials

- ☐ Office of Voter Registration
- ☐ Electoral Board
- ☐ Officers of Election

-  The Office of the Attorney General of Virginia has prepared a guide for localities interested in pursuing bailout that is available from SBE. *See*, SharePoint, GREB Shared Document, Bailout.

24.2.2 Effect of Bailout

Localities that have secured the required approval to bailout from section 5 coverage must still follow other federal and state laws and regulations such as notice requirements for precinct changes under § 24.2-306. In planning for redistricting following the decennial census, bailed out localities will need to consider that the state plans for legislative and congressional districts will be subject to preclearance even though local

plans in bailed out localities are not. As discussed in Chapter 25 on redistricting, timing local changes is important to avoid split precincts and duplication in notices to voters about adopted changes. General registrars and electoral board members play an important role in helping local governing bodies plan for the redistricting process and track relevant developments.